Commission has said that it has set up a unitary rate regulation scheme for both basic service and customer programming service. If so, who is empowered to enter into such agreements on behalf of this Commission? Can franchising authorities bind this Commission or can only this Commission do it? If the latter, do they bind future Commissions?

How can such agreements be squared with the clear intent of the Act for public input and participation and (in the case of basic service) the right of interested parties to present their views and appeal to this Commission? What notice must be given to the public and (by this Commission) to franchising authorities? No notice requirement would run directly against general principles that government be conducted in the sunshine and raises a specter of "secret deals secretly arrived at."

D. Pass-Throughs: Local Governments (NATOA) and King County, Washington have opposed the Commission's rule on the pass-through of external costs and franchise requirements. NCTA has requested that the pass-throughs be broadened to include the costs of rebuilding and upgrading cable systems.

Michigan Communities support the positions of Local Governments and King County and oppose the position taken by the NCTA. In this regard, this Commission should be aware how its rules are being portrayed to communities at the present time. Specifically, this Commission should know that cable operators in their dealings with municipalities have effectively indicated that they are going to turn the Commission's "price cap" regulation into "price floor" regulation by making most major costs "pass-through's". The Commission should resist such attempts and modify its regulations accordingly -- otherwise its attempts to simplify rate regulation are for naught.

Michigan Communities have learned this because some of them currently are in franchise renewal negotiations with cable operators. The cable operators have taken the position that under the Report and Order essentially all changes in or additions to franchise requirements are automatic pass-throughs.

Cable franchises average around 15 years in length, with some as long as 30 years. Fifteen year franchises that are currently expiring thus generally were negotiated in the late 1970's. Thirty year franchises were negotiated in the 1960's -- while Presidents Kennedy and Johnson were in office and cable was in its infancy. In each case, such franchises were developed for a different era when cable was much different than it is today. As a result, most franchises that are being renewed contain few of the requirements of a good modern franchise. This is especially true of smaller communities where even franchises issued within the last few years are often only 2 - 3 pages long with few (if any) requirements on the cable operator. Thus, for small communities, almost any provision of a new franchise could be argued to be an "additional requirement".

The most extreme situations occur in the 5% - 8% of municipalities where there is no current franchise, either because there never was one or because it expired and was never renewed. In such situations, if and when a franchise is agreed to, presumably the cable operators will contend that all its requirements are new and hence are additional costs entitled to a pass-through. And the cable operators will have obvious incentives to make as much as possible a "franchise requirement."

The following are some current examples of the preceding. As a part of their franchise negotiations, many of the Michigan Communities have negotiated or are negotiating customer service requirements that are generally modeled on those of this Commission, but with adaptations to local circumstances (normal business hours and the

like). The cable operators have agreed to many of the suggested changes and in some cases, suggested more stringent standards where their current policies were stricter than those of this Commission.

But the cable operators have essentially told the communities that anything that is in a new franchise on customer service is an automatic pass-through, even if it merely codifies the cable company's existing practice, so long as there was no identical provision in the prior franchise. As noted above, because most franchises being renewed are 15 - 30 years old, most contain no provisions analogous to those in this Commission's (or other) customer service standards. This emasculates the Commission's customer service regulations and the directive from Congress to improve these nationwide. And the cable operators apparently will contend that communities cannot even review the pass-through dollars to make sure that they are in fact for "franchise requirements" -- which is not a clearly defined term in the Report and Order.

As another example, most modern franchises to protect subscribers contain provisions to the effect that the cable operator will comply with applicable federal, state, and local laws. Some (not all) older franchises had such a requirement and even here the cable operators will presumably contend that the "requirement" has changed whenever the "applicable law" (state, Federal, or local) is added to or becomes more stringent. So now for practical purposes, most costs of complying with this Commission's technical standards, SEC requirements, local zoning laws, state laws of any description, tax laws, social security payments and the like are pass-throughs. If such contentions succeed, for practical purposes the Commission's "price cap" has become a "floor."

Another opportunity for abuse is if the cable operator can word a franchise such that it "requires" the operator to do something. If so, the operator will claim it can pass through

the costs of the "requirement." An illustration of how this can be abused is the following: Some of the small Michigan communities served by Tele-Media Corporation reported that when their franchises came up for renewal, Tele-Media simply delivered a new franchise, told them they had a few weeks to approve it, and said that if the community did not sign within that period of time, cable service to the community would be cut off! That is an extremely rough negotiating tactic and it is one that small communities -- with few or no full-time employees, and none knowledgeable on cable -- have great difficulty confronting. The communities in question signed the franchise as delivered to them. This illustrates how cable operators can use similar hardball tactics to effectively circumvent rate regulation by forcing communities to sign franchises that have been carefully drafted by the cable operator to make most significant costs "franchise requirements" and hence automatic pass-throughs.

Finally, NCTA argues that system upgrades and rebuilds have to be pass throughs. This makes a mockery of the Commission's price cap regulations. As with most utilities, the capital costs of a cable system are the single largest cost in the entire operation. Exempting them from the price cap on any basis makes the price cap meaningless.

And Michigan Communities would also note that they have been told by the cable operators that upgrades such as the installation of fiber trunks would not lead to an increase in costs. According to the cable operators, this was because the substantially reduced operating costs of the fiber trunks (as compared to the prior coaxial trunk) more than offset the cost of the rebuild. The cable operators explained that the fiber system had many fewer amplifiers which lead to many fewer repairs, fewer outages, much lower electricity consumption and the like, while delivering a clearer signal and more channels which increased penetration into the community.

These statements by the operators are an excellent example why the Commission should not allow the pass-through of system rebuilds or other significant capital costs without a cost of service proceeding.

The cable companies claim that the cost of system upgrades should be flowed through in part because they provide for "innovative services". Translated, this means that the cable companies want the captive cable customer to subsidize other services that are not profitable on their own. This is a clear social waste. If the so-called innovative services are worthwhile, they will attract the capital on their own. The captive cable customer need not subsidize them.

Finally, Michigan Communities urge that if the Commission retains any element (which it should not) of "franchise requirements" for public access, franchise fees, franchise requirements or otherwise as an automatic pass-throughs that it has to amend its regulations to give franchising authorities the following limited relief: It has to give them the ability at any time to unilaterally modify existing franchises to eliminate or reduce such "requirements." Such a cost reduction measure can hardly be objected to by the cable operators (although they probably will), will benefit subscribers and is a simple and effective means for lowering rates and preventing the potential abuses outlined above.

E. Small Systems: Michigan Communities oppose the request by the Coalition of Small System Operators and the Community Antenna Television Association, Inc. in their petitions for reconsideration that small cable systems should not be tightly regulated or should be regulated under entirely different substantive rules than larger systems. The residents of small communities, if anything, need more protection than the residents of large communities.

First, rates often exceed costs more in small communities than large ones. This is because in small rural communities, cable is often the only viable source of television signals. At most, three to six fuzzy pictures may be available with a rooftop antenna. Some of the Michigan Communities have this situation where the only realistic options for a quality signal are the VCR or the satellite dish. As a result, small cable systems overcharge even more than their urban brethren, due to "what the market will bear" pricing leading to higher rates because the options are fewer.

That small cable systems are overcharging even more than larger systems is supported by three facts: The rates charged by small systems in general appear to be higher than those of larger systems; Preliminary comparisons done by municipal cable consultants of the rates currently being charged by various Michigan cable systems versus the benchmarks generally show that the systems that exceed the benchmarks by the largest amounts (25% to 30%) are small systems; The staff of the Michigan Public Service Commission (MPSC) advises that in its rate regulation of telephone systems, the small systems with very few access lines were generally extremely profitable, such that rate cases generally had to be initiated by the MPSC to reduce rates to appropriate levels.

Second, the cable operators claim that small systems don't overcharge and thus need less regulation because they are often owned by "friends and neighbors". This is incorrect--the owners generally are not neighbors and they certainly aren't friends. Most of the small systems are not locally owned -- they are owned by corporations in other states. C-TEC is a good example: It has approximately seventy systems in Michigan with a total of approximately 140,000 subscribers. Take out its five largest systems and the average number of subscribers per system is in the 1,000 range with many below it. Yet C-TEC is a large, publicly-held company headquartered in Dallas, Pennsylvania with substantial

interests in cable (250,000 subscribers in several states), cellular phones and conventional telephone (Commonwealth Telephone of Pennsylvania). TCI has one small system directly in Michigan (Northport -- total subscribers 256) and through its Bresnan Communications affiliate has several additional small Michigan systems with less than 1,000 subscribers. And Midwest I Cable Systems, Inc., a company headquartered in Martinsville, Indiana, has 219 systems in eight states (34 systems in Michigan) with a total of 21,168 subscribers. Simply math shows it has less than 100 subscribers per system. (All data from 1993 Cable and Television Factbook). These examples could be multiplied. So much for the cable operator's claims that due to local ownership there is restraint on pricing.

Some cable operators have told Michigan Communities that many of the small cable systems were "built to be sold, not to be operated." This is shorthand for a person getting the franchise in a local area and putting a system together with chewing gum and bailing wire with the intent of immediately selling it and turning a quick profit.

But some of the entrepreneurs who did this in the late 1980's and early 1990's found that the sellers' market had dried up -- they were stuck and not able to unload the small systems they had built. So entrepreneurs who had made their money by selling systems suddenly found that they were stuck as long term operators. The large cable markets already having been built, the entrepreneurs and systems who were left in this situation were predominately small systems in small communities.

There is no reason to carve out a special set of rules for these would-be cable tycoons of rural America. They made money on some of their transactions. There is nothing in the Constitution or Cable Act that guarantees them special rules on their last few systems just because they could not sell for what they hoped for and ended up having to operate the system.

The Michigan Public Service Commission (MPSC) regulates (or in the case of telephone companies, until recently regulated) small telephone and small private water companies that predominantly serve the same types of communities served by small cable systems. The MPSC indicates that it uses the same cost of service rules for these enterprises as for large utilities, but that as a practical matter the regulation is somewhat more relaxed and streamlined due to the small sums at stake and small amounts of data needed. The MPSC also indicates that these companies all tend to use the same law firm or accounting/engineering firms for their filings, which reduces costs.

The same can and should be expected to occur with small cable systems, for the same reasons. Please note that small communities (which are the communities generally served by small cable systems), often have at most one full time employee, and in the case of small townships have no employees, and are thus unlikely to engage in extensive, costly procedures for cable rate regulation.

Finally, in many areas in Michigan, small communities are joining together for rate regulation where they are served by the same cable system (or by different systems all owned by the same MSO). They are doing this for a simple reason: Efficiencies and cost reduction, which should lead to reductions in the cost of regulation for the cable operators as well.

For these reasons, Michigan Communities urge that the request for exemptions, special treatment or different rules for small cable systems be denied.

F. Municipal Systems: NCTA attacks this Commission's use of data from Paragould, Arkansas and other municipal systems in computing benchmark rates. The following specific items show that NCTA's claims are without merit.

First, the attached letter from the Larry Watson, the General Manager of City Utilities in Paragould, Arkansas shows that NCTA's "analysis" did not even use the right date for the year the municipal system started operation. Nor did it use the actual costs to construct the two cable systems whose profitability the "analysis" purports to compare. Mr. Watson's letter describes the history of their system and comments as follows:

> "Our municipal system started operation a little more than 2 years ago - we started in April, 1991. The City did this because we were very dissatisfied with the rates and service from our existing cable operator, a subsidiary of Cablevision Systems, Inc. In order to get into the cable business, we had to have special legislation pass the Arkansas legislature.
>
> The FCC should know that this legislation would not have passed but for the strong support of then Governor Bill Clinton. The governor has always been a strong supporter of our system. He has told me many times, 'Larry, I am delighted we got that bill through to allow you to go into the cable business. My only disappointment is that other communities have not followed your lead to set up their own municipal cable systems.'
>
> The Governor supported our efforts because he knows that municipal systems provide quality service at reasonable rates. And these rates are not subsidized by or other operations.
>
> The economic analysis attached to the NCTA's filing and its conclusions are incorrect. The figures used in it for such basic factors as the cost to build our system and the initial year we started operation are wrong - and not by a little, by a lot. These errors aid their incorrect conclusion that we're losing lots of money. I noticed that the consultants admitted they didn't use the true numbers: They said they didn't use the actual cost to build our system, but instead their estimate of its replacement cost.
>
> We built the system for a lot less than the figure they give for replacement cost. I assume the reason they used replacement cost for us was because if they used our actual cost to build our system, they'd have to do the same for our private competitor, Paragould Cablevision, which has been here for nearly 30 years, and that would show that the private company is making money hand over fist.
>
> Another error is the study's failure to use our actual debt service figures - these are publicly available, why didn't the consultants use them? And their statements about $60 per home tax are wrong. An assessed value of $50,000 would pay a tax of $27.00.

Let me explain this tax - because we are a startup operation competing with an existing cable company, we had to have some assurance that we could meet our costs during the first few years when we had few customers. Our citizens, who in effect are our shareholders, approved the tax to help in this regard. Our cable system has been doing better than our projection, and although we had to draw on the tax in the first year, it was well below the $60 level and is declining.

I don't see how this support we get from our citizen owners during our startup phase is any different from the support a private company would get from its owners to cover the negative cashflow during startup. Nobody makes money from day 1.

Finally the consultants say (or suggest) they got their data from us. They didn't. That's obvious in part from the mistakes in their figures. And as manager of the city's utilities any request for data would have come to my attention, and there was none."

Finally, Mr. Watson's letter points out that each of the city's utilities are run separately (none subsidize the others) and NCTA's conclusions both on this point and on the sums being lost by the Paragould system are wrong. So much for NCTA's "analysis" of the cable systems in Paragould.

The attached letter from Larry Hobart, the Executive Director of the American Public Power Association covers additional points. APPA's 2,000 members are municipally-owned (city owned, county owned) electric utilities which provide 15% of the U.S. population with electricity. About 40 APPA members own and operate municipally-owned cable systems. Mr. Hobart points out some major errors in the NCTA's petition as follows:

"I have to take issue with NCTA's statements that municipal systems "are extremely unlikely to cover costs plus a reasonable profit" because they "typically are subsidized by the municipality." This statement is not true.

Municipally owned utilities (electric, water, sewer, cable) are virtually always run as self-liquidating enterprises which cover their costs. Subsidies, if there are any, are typically from the utility to the city general fund -- not the other way around. Some of the reasons for this are financial -- cities nationwide face major problems -- they generally cannot afford subsidies. And municipalities must issue bonds to get the capital to build utility systems. Wall Street investors legitimately demand that costs be properly segregated

and that no cross subsidization occurs in order to have an accurate picture of the financials of the utility and to provide reasonable assurance that the bonds will be repaid.

NCTA has skewed the sample of municipal utilities which it mentions in its filings to municipal cable systems that have been created within the last two or three years. This is true of Glasgow, Kentucky: Paragould, Arkansas: and Elbow Lake, Minnesota. No startup enterprise, public or private, can be expected to earn money from day one. But to extrapolate from these startup situations to well-established municipally owned cable systems as a whole is incorrect."

So much for NCTA's claim about "cross subsidies".

Both Mr. Hobart and Thomas Daly, the General Manager of the municipally-owned cable system in Wyandotte, Michigan commented in letters on matters relating to rates and the fact that municipally-owned utilities provide a useful competitive check on utility rates by so-called "benchmark competition" according to the courts, Congress, economists and others. As Mr. Hobart said:

"The NCTA and FCC should be aware that municipally owned utilities have always been viewed by the courts, Congress, Federal Energy Regulatory Commission and economists as providing a useful competitive check on utility rates -- so-called benchmark competition. This is because municipal utilities, due to the lack of conflict of interest between shareholders and customers, the high efficiency with which they operate (shown by repeated studies and the absence of excessive salaries) provide a useful comparison as to what the rates of privately owned utilities should be. This is the theory of "yardstick" competition. Even though two utilities which as natural monopolies do not compete head to head, the low rates of a municipally owned system (due to the efficiencies and other factors just mentioned) provides a check or "yardstick" for the courts and regulators to use in setting the rates for adjacent privately owned utilities.

This benchmark competition approach is particularly appropriate in the cable area where municipally owned utilities built their systems, operated them, paid off their debt, and kept rates low. This is in marked comparison to privately owned cable companies which have simply sold, resold, and sold their systems again with each purchaser increasing rates to cover the cost of the purchase price, generate excessive profits and the like. This would not happen if cable companies were subject to effective competition. Thus, the rates for municipally owned cable systems give a very good indication of what the rates of private cable system would be if they faced true competition."

Mr. Daly's letter notes (see the letter and rate sheet attached) that for $12 they offer 48 channels, including remotes, free installation, converter box, and program guide. His comments on their history, why their rates are low compared to other operators and on cross subsidization are as follows:

> "We started providing service in the city in 1983 and currently service approximately 10,000 homes - a penetration rate of 75%. You will note this penetration rate is very high by industry standards. This is because we have kept our rates low. For $12.00 today we offer 48 channels which includes remote, free installation, convertor box, and program guide. See our rate sheet, attached.
>
> We are very proud of our municipal cable system. One of the people that appears on it frequently is our local Congressman, John Dingell. I know he is proud of it as well and has worked with us to make sure that our system is not unduly adversely affected by the provisions of the 1992 Cable Act. Congressman Dingell has been a strong supporter of our system throughout its existence and we appreciate that.
>
> As with most municipally-owned utilities nationwide, each of our own utilities is run as a self-liquidating operation. When our cable system started out in 1983, its rates were the same as those of privately-owned cable systems in adjacent communities. Over time, as the private systems were sold and resold, they kept increasing their rates. We did not because our rates were more than adequate to cover the cost of the debt issued to build our system plus all its operating costs. Our external debt has been retired, and we are planning a fiber optic overbuild of our system.
>
> Claims that the cable system is subsidized by the city are wrong. We pay franchise fees of approximately $275,000 per year to the General Fund of the City, and we support our two public access channels. In fact, the cable system recently was able to give a $35,000 gift to the city to help public sector programming. The cable system contributes to the city."

The attached letter from the Glasgow Electric Plant Board shows that the private cable operator there has expressly said that it is <u>not</u> losing money even at <u>lower</u> rates than it is now charging. Mr. William Ray, the Superintendent of the Glasgow system said as follows:

"The cable television rates in Glasgow are not the result of a short-term price war. Head-to-head competition in Glasgow has gone on now for over four years. The municipally-owned system's rate started at $13.50 per month for basic and has continued to use that rate to this date. The private operator lowered its rates from $14.25 for a 24-channel basic package to $5.95 for a 42-channel basic package on a street-by-street pattern identically matching the construction of the municipally-owned system in 1989. Subsequently, they offered a rate of $8.95 to the whole city once the municipally-owned system was completed. The $8.95 rate continued for over 2-1/2 years until January 1, 1993 when they increased their rate to $12.50. During the time of their $8.95 basic rate, attorneys for the private cable company stated in both newspaper interviews and in depositions that the private cable operator was "still making money at the $8.95 rate - just not as much as they used to." If these rates are not the result of competition as mentioned in the Petition filed by the NCTA, would we not have to assume that they have some anti-competition motive?

The filing also mentions that our system's financial statements show a net loss. That statement is true. During the four years of operation of our municipal system, the system has recorded a decreasing net loss at the need of each fiscal year. Fiscal year 1994 should end this trend, with a projected positive net income. This is not at all an unusual situation, even for privately owned cable systems. Very few new businesses today begin showing a net profit immediately."

Finally, Mr. Hobart's letter refutes claims that municipal cable systems are subsidized due to their being part of larger systems used for multiple purposes:

"Finally, the contention that municipally owned cable systems are "cross-subsidized" because in some cases the community's cable system is part of a larger municipal fiber optic system which is used for customer meter reading, the monitoring and dispatch of electric substations, water systems, and sewage pumping stations is incorrect. Everyone benefits if a single communication system can be used for multiple purposes. Where this occurs, municipal utilities allocate costs to the several cost centers that benefit. And using their cable system for other purposes is clearly what cable companies would like to do -- to get into the telephone business, the personal communications systems business, the telephone alternate access business, and so on. The only difference is that there the private cable companies appear to want to charge high rates to their captive cable customers where they have a monopoly so as to subsidize the rates for other services where there is competition. Truly, this is the pot calling the kettle black."

For the preceding reasons, this Commission was correct in using data from municipally owned system in setting benchmark rates and should continue to do so.

Respectfully submitted,

Date: 7/20/93

John W. Pestle
Attorneys for Michigan Communities
VARNUM, RIDDERING, SCHMIDT & HOWLETT
P.O. Box 352
Grand Rapids, Michigan 49501-0352
(616) 336-6000

CONTINENTAL CABLEVISION OF MICHIGAN, INC.

Supervisor :

Enclosed please find correspondence from Paul Glist of the Washington, D.C. law firm Cole, Raywid, and Braverman, a firm specializing in cable issues.

Mr. Glist highlights issues for you to examine as you consider certification.

If you wish to discuss these issues or any issue in reference to the 1992 Cable Act, please feel free to call me. I would be happy to discuss the new cable law and its impact on your franchise area.

Sincerely,

Patricia L. Wilson
General Manager

PLW/blb

enc.

1401 E. Miller Road • P.O. Box 30280 • Lansing, Michigan 48909-7780 • Phone (517) 394-0001

COLE, RAYWID & BRAVERMAN

JOHN P. COLE, JR.
BURT A. BRAVERMAN
ROBERT L. JAMES
JOSEPH R. REIFER
FRANCES J. CHETWYND
JOHN D. SEIVER
WESLEY R. HEPPLER
PAUL GLIST
DAVID M. SILVERMAN
JAMES F. IRELAND III
STEVEN J. HORVITZ
ROBERT G. SCOTT, JR.
SUSAN WHELAN WESTFALL
GARY I. RESNICK
JANET R. THOMPSON*
THERESA A. ZETERBERG
STEPHEN L. KABLER
JOHN DAVIDSON THOMAS
TIMOTHY R. FURR
MARIA T. BROWNE**
BENJAMIN E. GOLANT

* ADMITTED IN PENNSYLVANIA ONLY
** ADMITTED IN VIRGINIA ONLY

ATTORNEYS AT LAW
SECOND FLOOR
1919 PENNSYLVANIA AVENUE, N. W.
WASHINGTON, D. C. 20006-3458
(202) 659-9750

ALAN RAYWID
(1930-1991)

CABLE ADDRESS
"CRAB"

TELECOPIER
(202) 452-0067

June 8, 1993

Direct Dial
(202) 828-9820

VIA TELECOPIER

Richard S. Weigand
Continental Cablevision
1111 Michigan Avenue
Suite 200
East Lansing, MI 48823

Dear Rich:

This letter will explain the operation of the Federal Communications Commission's "certification" rules and the practical reasons why a franchising authority might wish to delay certification of basic rate regulation authority.

Although local franchising authorities may seek certification as early as June 21, 1993, there is no deadline for doing so, and no rights are forfeited through delay. When a franchising authority obtains certification (which is essentially automatic within 30 days of filing), it can always reach back to June 21 and award refunds from that date for up to one year of rate excesses (if any). Thus, a franchising authority which filed for certification in January, 1994, and received an operator's Form 393 in March, 1994, could reach back in say, April, and refund all rate overcharges from June 21, 1993, to the date of the order.

During the delay (prior to certification), a franchising authority has its maximum regulatory flexibility. It can obtain all of the FCC's benchmark data and calculate the Form 393 rate as though it were in formal proceedings. It may review informal cost of service studies. It may agree to negotiated settlements, such as using some equipment charges to subsidize lifeline or senior discounts.

However, once a franchising authority certifies, it loses that flexibility. It is bound to follow FCC rules -- all 540 pages of them -- and cannot informally "settle" a rate case. It must go through the process under FCC procedures, which requires public participation and will add to the cost of administration of the franchise. Even when it issues its final order (with which it is presumably satisfied), that order is subject to appeal to the FCC by any subscriber who participated in the rate process. And once certified, there is no provision for de-certification except one which would have the FCC take over all rate control, including control of basic. Thus, in a practical sense, certification reduces a franchising authority's options.

It is not the case that a cable operator would be free to raise rates or alter services without checking if the rate freeze expires August 3 and a city is not certified. Rate and channel changes must be preceded by 30-day notice, during which a city could certify. If the changes were at all objectionable, rates could be controlled by "reaching back" to June 21 for refunds. As to channel changes: even if a city is certified, it is not authorized to prevent the retiering and restructuring of service tiers or to select programming which the operator must carry.

Sincerely,

Paul Glist

Paul Glist

N-COM HOLDING CORPORATION
8465 RONDA DRIVE
CANTON MI 48187

Frederick G. Collman
Director-Corporate Development

Phone: (313) 455-5574
FAX: (313) 455-2423

July 6, 1993

Kevin Cornish, Village Manager
Village of Clinton
119 East Michigan Avenue
P.O. Drawer E
Clinton, Michigan 49236

Re: Rate Regulation Resolution - June 7, 1993.

Dear Kevin,

I am writing in response to the cable rate resolution that the Village Council adopted on June 7, 1993. That resolution is facially inaccurate. The resolution states that Clear's cable rates "violate the FCC regulations." However, the resolution was passed weeks before rate regulation was to have gone into effect on June 21st, 1993. (The FCC has now postponed the effective date of rate regulations until October 1, 1993.) Obviously, Clear cannot be in violation of regulations that are not yet in effect. Moreover, the Village's position that Clear is in violation of FCC regulation runs directly counter to the most fundamental notions of due process since such a position was taken without any hearing or request for information from Clear (as required by the new regulations) that could demonstrate (one way or another) what Clear's costs are and therefore what its rates should be under the FCC's announced regulations.

The resolution passed on June 7, 1993 also states that the Village's attorneys are to file a complaint with the FCC regarding cable rates on June 21. It seems presumptive to try and divine what prices or rates will be in effect weeks in advance of any specified date. It's like getting a speeding ticket in advance of actually speeding, simply because the patrolman anticipates you speeding in the future. It would be more appropriate the see what Clear's rates are on October 1, and the basis of those rates, before filing a complaint with the FCC.

Please call me or Pam Rider if you've any questions in this regard.

Sincerely,

Frederick G. Collman

cc: Pam Rider
Harry Suri
John Read, Esq., Wilmer Cutler & Pickering

City Light & Water
P.O. Box 9 ☎ 501-236-8571
Paragould, Arkansas 72451-0009

LARRY WATSON, MANAGER

FAX: (616)-336-7000

July 15, 1993

Mr. John W. Pestle
Attorney
Varnum, Riddering, Schmidt & Howlett
P.O. Box 352
Grand Rapids, Michigan 49501-0352

RE: National Cable Television Association Petition for Reconsideration

Dear John:

Thank you for sending me a copy of the National Cable Television Association Petition for Reconsideration in the FCC's rate regulation proceedings. I have reviewed the statements in there about our municipally-owned cable system. I do not know where these people get their data because it is not correct.

Our municipal system started operation a little more than 2 years ago - we started in April, 1991. The City did this because we were very dissatisfied with the rates and service from our existing cable operator, a subsidiary of Cablevision Systems, Inc. In order to get into the cable business, we had to have special legislation pass the Arkansas legislature.

The FCC should know that this legislation would not have passed but for the strong support of then Governor Bill Clinton. The Governor has always been a strong supporter of our system. He has told me many times, "Larry, I am delighted we got that bill through to allow you to go into the cable business. My only disappointment is that other communities have not followed your lead to set up their own municipal cable systems."

The Governor supported our efforts because he knows that municipal systems provide quality service at reasonable rates. And these rates are not subsidized by our other operations.

City Light & Water
P.O. Box 9
Paragould, Arkansas 72451-0009
CONTINUATION SHEET

The economic analysis attached to the NCTA's filing and its conclusions are incorrect. The figures used in it for such basic factors as the cost to build our system and the initial year we started operation are wrong - and not by a little, by a lot. These errors aid their incorrect conclusion that we're losing lots of money. I noticed that the consultants admitted they didn't use the true numbers: They said they didn't use the actual cost to build our system, but instead their estimate of its replacement cost.

We built the system for a lot less than the figure they give for replacement cost. I assume the reason they used replacement cost for us was because if they used our actual cost to build our system, they'd have to do the same for our private competitor, Paragould Cablevision, which has been here for nearly 30 years, and that would show that the private company is making money hand over fist.

Another error is the study's failure to use our actual debt service figures - these are publicly available, why didn't the consultants use them? And their statements about $60 per home tax are wrong. An assessed value of $50,000 would pay a tax of $27.00.

Let me explain this tax - because we are a startup operation competing with an existing cable company, we had to have some assurance that we could meet our costs during the first few years when we had few customers. Our citizens, who in effect are our shareholders, approved the tax to help in this regard. Our cable system has been doing better than our projection, and although we had to draw on the tax in the first year, it was well below the $60 level and is declining.

I don't see how this support we get from our citizen owners during our startup phase is any different from the support a private company would get from its owners to cover the negative cashflow during startup. Nobody makes money from day 1.

City Light & Water
P.O. Box 9
Paragould, Arkansas 72451-0009
CONTINUATION SHEET

Finally the consultants say (or suggest) they got their data from us. They didn't. That's obvious in part from the mistakes in their figures. And as manager of the city's utilities any request for data would have come to my attention, and there was none.

The statements that our various city operations subsidize the cable system are wrong. We have municipal electric, water, sewer, cable and garbage utilities. Each is run totally separately. None subsidizes the others. For example, each pays its share of billing, maintenance, overhead, rental and other costs. The municipal cable operation pays a pole attachment fee to the municipal electric utility just like the private cable company does. So the statement that our cable system operations are subsidized by us "providing shared resources and personnel at no cost" is wrong.

For all these reasons and others, the NCTA conclusion that we will lose over $3 million from 1997 to 2001 is wrong.

I hope this letter helps in responding to the misstatements in the NCTA filing.

Sincerely,

Larry Watson

Larry Watson

LW:rh

American Public Power Association

2301 M Street, N.W.
Washington, D.C. 20037-1484
202/467-2900

July 15, 1993

John W. Pestle
Attorney
Varnum, Riddering,
Schmidt & Howlett
P.O. Box 352
Grand Rapids, Michigan 49501-0352

Dear Mr. Pestle:

I have reviewed the Petition for Reconsideration filed by the National Cable Television Association in the FCC's cable rate regulation rulemaking and would like to set the record straight on the misstatements it makes as to municipally owned utilities.

By way of background, APPA is the national service organization for the more than 2,000 municipally owned electric utilities in the country which provide 15% of the U.S. population with electricity -- at rates typically well below those of privately owned electric utilities. APPA members range from such cities as Los Angeles and Seattle to small communities of only a few hundred people. Many APPA members have supplied electricity to their communities for more than 100 years.

About 40 APPA members own and operate municipal cable systems. These provide high quality service at rates below those of their privately owned competitors, while more than covering their costs. APPA puts on an annual seminar to assist communities which wish to create their own municipal cable systems.

I have to take issue with NCTA's statements that municipal systems "are extremely unlikely to cover costs plus a reasonable profit" because they "typically are subsidized by the municipality." This statement is not true.

Municipally owned utilities (electric, water, sewer, cable) are virtually always run as self-liquidating enterprises which cover their costs. Subsidies, if there are any, are typically from the utility to the city general fund -- not the other way around. Some of the reasons for this are financial -- cities nationwide face major financial problems -- they generally cannot afford subsidies. And municipalities must issue bonds to get the capital to build utility systems. Wall Street investors legitimately demand that costs be properly segregated and that no cross subsidization occurs in order to have an accurate picture of the financials of the utility and to provide reasonable assurance that the bonds will be repaid.

NCTA has skewed the sample of municipal utilities which it mentions in its filings to municipal cable systems that have been created within the last two or three years. This is true of Glasgow, Kentucky;

Paragould, Arkansas; and Elbow Lake, Minnesota. No startup enterprise, public or private, can be expected to earn money from day one. But to extrapolate from these startup situations to well-established municipally owned cable systems as a whole is incorrect.

The NCTA and FCC should be aware that municipally owned utilities have always been viewed by the courts, Congress, Federal Energy Regulatory Commission and economists as providing a useful competitive check on utility rates -- so-called benchmark competition. This is because municipal utilities, due to the lack of a conflict of interest between shareholders and customers, the high efficiency with which they operate (shown by repeated studies and the absence of excessive salaries) provide a useful comparison as to what the rates of privately owned utilities should be. This is the theory of "yardstick" competition. Even though two utilities which as natural monopolies do not compete head to head, the low rates of a municipally owned system (due to the efficiencies and other factors just mentioned) provides a check or "yardstick" for the courts and regulators to use in setting the rates for adjacent privately owned utilities.

This benchmark competition approach is particularly appropriate in the cable area where municipally owned utilities built their systems, operated them, paid off their debt, and kept rates low. This is in marked comparison to privately owned cable companies which have simply sold, resold, and sold their systems again with each purchaser increasing rates to cover the cost of the purchase price, generate excessive profits and the like. This would not happen if cable companies were subject to effective competition. Thus, the rates for municipally owned cable systems give a very good indication of what the rates of private cable systems would be if they faced true competition.

Finally, the contention that municipally owned cable systems are "cross-subsidized" because in some cases the community's cable system is part of a larger municipal fiber optic system which is used for customer meter reading, the monitoring and dispatch of electric substations, water systems, and sewage pumping stations is incorrect. Everyone benefits if a single communication system can be used for multiple purposes. Where this occurs, municipal utilities allocate costs to the several cost centers that benefit. And using their cable system for other purposes is clearly what cable companies would like to do -- to get into the telephone business, the personal communications systems business, the telephone alternate access business, and so on. The only difference is that there the private cable companies appear to want to charge high rates to their captive cable customers where they have a monopoly so as to subsidize the rates for other services where there is competition. Truly, this is the pot calling the kettle black.

I hope this response to the comments of the NCTA is helpful. Please let me know if you have any questions.

Sincerely,

Larry Hobart
Executive Director

LH:adh

City of Wyandotte

Department of Municipal Service

COMMISSIONERS
LOWELL D. ALM, PRESIDENT
THOMAS A. KUZMIAK, VICE PRESIDENT
ANNE C. RONCO
LEONARD T. SABUDA
JILL A. KOSOWSKI

THOMAS M. DALY
GENERAL MANAGER AND SECRETARY
3005 BIDDLE AVENUE
WYANDOTTE, MICH. 48192
PHONE (313) 282-7100

MUNICIPAL ELECTRIC, POWER, WATER AND CABLE TV
SERVICE SINCE 1894

July 14, 1993

Mr. John Pestle
Attorney
Varnum, Riddering, Schmidt & Howlett
P.O. Box 352
Grand Rapids, MI 49501-0352

Dear John,

Thanks for sending me the National Cable Television Association's petition in the FCC cable rate case. I want to comment on municipally-owned cable systems from the perspective of the Wyandotte Municipal Service Commission. The Municipal Service Commission has provided utility services to Wyandotte residents for over 100 years and currently provides water, electricity, steam and cable service. We got into the cable business in 1982 after a referendum when nearly two-thirds of our residents said that they preferred to have the city provide cable service, and directed us to set up a municipally-owned system that was self-sustaining and financially independent, just like our electric, sewer, and steam systems.

We started providing service in the city in 1983 and currently service approximately 10,000 homes - a penetration rate of 75%. You will note this penetration rate is very high by industry standards. This is because we have kept our rates low. For $12.00 today we offer 48 channels which includes remote, free installation, convertor box, and program guide. See our rate sheet, attached.

We are very proud of our municipal cable system. One of the people that appears on it frequently is our local Congressman, John Dingell. I know he is proud of it as well and has worked with us to make sure that our system is not unduly adversely affected by the provisions of the 1992 Cable Act. Congressmen Dingell has been a strong supporter of our system throughout its existence and we appreciate that.

As with most municipally-owned utilities nationwide, each of our own utilities is run as a self-liquidating operation. When our cable system started out in 1983, its rates were the same as those of privately-owned cable systems in adjacent communities. Over time, as the private systems were sold and resold, they kept increasing their rates. We did not because our rates were more than adequate to cover the cost of the debt issued to build our system plus all its operating costs. Our external debt has been retired, and we are planning a fiber optic overbuild of our system.

Claims that the cable system is subsidized by the city are wrong. We pay franchise fees of approximately $275,000. per year to the General Fund of the City, and we support our two public access channels. In fact, the cable system recently was able to give a $35,000 gift to the city to help public sector programming. The cable system contributes to the City.

The citizens of Wyandotte and Congressman Dingell are proud of our system. It is good and well run. Our rates reflect what rates would be under competition because we run a tight, efficient operation. And we only borrowed money once to build the system--we did not turn around and resell it and then borrow much more money than the system was worth simply because we had a monopoly and could raise rates without any fear of competition.

Very truly yours,

City of Wyandotte
DEPARTMENT OF MUNICIPAL SERVICE

Thomas M. Daly
General Manager

TMD:

Attachment